

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

JUAN MIGUEL NIEVES, *individually*)
and on behalf of all others similarly situated,)
Plaintiff,)

v.)

Civil Action No. 1:19-cv-1333

RREAL IMAGE, INC. d/b/a “The Salsa)
Room,” and WILFREDO VILLAREAL,)
Defendants.)

ORDER

This Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, collective action for unpaid overtime wages is before the Court on plaintiff’s Motion for Sanctions and for Entry of an Order of Default against defendant RReal Image, Inc. d/b/a “The Salsa Room.” Plaintiff’s motion was referred to United States Magistrate Judge Theresa C. Buchanan for preparation of a Report and Recommendation. On May 15, 2020, the Magistrate Judge recommended that plaintiff’s Motion for Sanctions and for Entry of an Order of Default be granted. Specifically, the Magistrate Judge recommended that default judgment be entered against defendant RReal Image, Inc. as a sanction pursuant to Rule 37(b)(2)(A)(vi), Fed. R. Civ. P., and that plaintiff be awarded \$3,780.00 in attorney’s fees. No objections to the Magistrate Judge’s Report and Recommendation were filed.¹

¹ This case’s record reflects that attorney Stephen A. Bamberger remains counsel of record for defendant RReal Image, Inc. Although plaintiff’s counsel represented in his January 20, 2020 Motion to Compel and for Sanctions that on January 17, 2020 attorney Bamberger stated a desire to withdraw as counsel for defendant RReal Image, Inc., attorney Bamberger never filed a motion to withdraw as counsel. Moreover, attorney Bamberger (i) filed a Reply in opposition to plaintiff’s Motion for Sanctions and an Order of Default on March 9, 2020 on behalf of both defendant RReal Image, Inc. and defendant Wilfredo Villareal and (ii) appeared at the hearing on plaintiff’s Motion for Sanctions and an Order of Default on March 10, 2020. Accordingly, defendant RReal Image, Inc. received notice of the May 15, 2020 Report and Recommendation through an email sent to attorney Bamberger by the ECF system.

Upon consideration of the record and Magistrate Judge's Report and Recommendation, and having found no clear error,²

The Court **ADOPTS**, as its own, the findings of fact and recommendations of the United States Magistrate Judge, as set forth in the Report and Recommendation (Dkt. 19).

Accordingly,

It is hereby **ORDERED** that plaintiff's Motion for Sanctions and for Entry of an Order of Default against defendant RReal Image, Inc. d/b/a "The Salsa Room" (Dkt. 13) is **GRANTED**.


It is further **ORDERED** that default judgment as to liability is entered against defendant RReal Image, Inc. d/b/a "The Salsa Room" and in favor of plaintiff Juan Miguel Nieves on Count I of plaintiff's Complaint, violation of the Fair Labor Standards Act, 29 U.S.C. § 207.

It is further **ORDERED** that defendant RReal Image, Inc. must pay \$3,780.00 to plaintiff for attorney's fees and costs incurred in bringing plaintiff's January 20, 2020 Motion to Compel Discovery Responses and for Sanctions and plaintiff's February 13, 2020 Motion for Sanctions and for Entry of an Order of Default.

It is further **ORDERED** that this matter is **REMANDED** to the United States Magistrate Judge to determine an appropriate award of damages and attorney's fees.

The Clerk is directed to send a copy of this Order to all counsel of record.

Alexandria, Virginia
June 2, 2020



T. S. Ellis, III
United States District Judge

² See *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (in the absence of any objections to a magistrate judge's report and recommendation, the court "need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.") (citation and internal quotation marks omitted).